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No. 91-1076

In the Supreme Court of the United States

October Term, 1991

LONG BEACH EQUITIES, INC.,

Petitioner,

vs.

COUNTY OF VENTURA, CALIFORNIA, and
CITY OF SIMI VALLEY, CALIFORNIA,

Respondents.

BRIEF OF RESPONDENT CITY OF SIMI VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions framed by the petitioner seriously misstate the facts of this case; the questions are more properly stated below.

1. Whether the City of Simi Valley's land use regulations which permit development of approximately three hundred twenty-five (325) residential units on petitioner's two hundred fifty (250) acres are facially unconstitutional.

2. Whether petitioner's *as applied* claims are ripe for judicial review where petitioner never applied to annex to or develop in the City.

Another issue briefed, but not addressed by the lower courts is:

3. Whether petitioner's *facial* claims are barred by statutes of limitation.

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BRIEF OF RESPONDENT CITY OF SIMI VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

There are no special and important reasons for granting review in this case, and the petition materially misstates the facts, and misrepresents the law decided by the state courts.

OPINIONS BELOW

The petition fails to disclose that following the decision of the California Court of Appeal, granting the City of Simi Valley's ("City") petition for a writ of mandate, the remittitur was issued on October 1, 1991 and the trial court entered judgment in favor of the City on December 2, 1991. (Appendix 1.) Petitioner has not appealed this judgment to the state appellate courts.

JURISDICTION

Jurisdiction is lacking because:

1 The *as applied* claims are not ripe for judicial review; and

2 The petitioner has not exhausted its state court appeals from the trial court's judgment entered January 3, 1992.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The City's growth management ordinance, Ordinance No. 638 is Appendix 3.

STATEMENT OF THE CASE

A. Procedural History.

The state courts decided this case on the complaint and matters of which it may and did take judicial notice.[1] The demurrer of the County of Ventura ("County") was sustained by the trial court and an appeal taken. The demurrer of the City was sustained in part and overruled in part by the trial court. The California Court of Appeal granted the City's petition for an extraordinary writ to review the overruling of the City's demurrer to certain causes of action.[2] After the Court of Appeal issued its final opinion (Petition, Appendix D) and the California Supreme Court denied review (Petition, Appendix E), the remittitur issued from the Court of Appeal to the trial court and judgment was entered on January 3, 1992 (Appendix 1). Petitioner has not exhausted its state court appeals from this judgment.

B. Statement Of The Facts.

In 1969 the County of Ventura adopted annexation policies (the Guidelines for Orderly Development) which

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[1] California Evidence Code §§ 452-453; California Code of Civil Procedure § 430.30; *see Agins v. Tiburon*, 447 U.S. 255, 259 n.6 (1980). The California courts took judicial notice of City and County ordinances, plans, resolutions and other official acts of the City and the County. Petition, Appendix C, p. 3; and Appendix F, pp. 2–4 and 6.

[2] The demurrer was sustained without leave to amend for the third, fourth and fifth causes of action and overruled as to the first cause of action (inverse condemnation), second cause of action (denial of substantive and procedural due process), and sixth cause of action (declaratory and injunctive relief). *See* Petition, Appendix F, p. 6.

directed urban development into incorporated areas in order to conserve County resources, ensure the availability of municipal services and prevent urban sprawl. *See* California Government Code § 65859.

In 1984 Long Beach Equities ("LBE"), a holding company of a bank, allegedly purchased two hundred fifty (250) acres of the two thousand eight hundred (2,800) acre Marr Ranch which is one of many large ranches near the City of Simi Valley within the City's sphere or area of influence. The City's general plan covers these unincorporated areas. In 1984 the City's then existing general plan showed intense *future* development for the Marr Ranch area. (One thousand one hundred (1,100) residential units and a shopping center.) The City adopted hillside grading restrictions and a ten (10) year growth management program in 1986, and a revised general plan The density and intensity of development was reduced City-wide and in its sphere and area of influence, including the Marr Ranch, as a result of these actions. A brief development moratorium was in effect while the City studied planning alternatives. *See* California Government Code § 65858.

After purchasing the two hundred fifty (250) acres in 1984 LBE took a preliminary steps towards annexation by proposing a specific plan for the Marr Ranch.[3] Because there are multiple ownerships within the Marr Ranch the City became the applicant for the specific plan. The draft

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[3] A specific plan is a legislative act, *Yost v. Thomas*, 36 Cal.3d 561 (1984). It is a traditional planning tool authorized by the California Legislature over twenty-five (25) years ago for the "systematic implementation" of a general plan. California Government Code § 65451.

specific plan was revised after the hillside development restrictions went into effect. When the City began its general plan revision (and adopted a development moratorium), LBE ceased pursuing annexation to the City. The City's revised general plan adopted in 1988 permits three hundred twenty-five (325) residential units on LBE's two hundred fifty (250) acre parcel. In 1984, LBE attempted to file a subdivision map with the County for two hundred forty-nine (249) units. In accordance with its long existing annexation policies the County told LBE it must first annex to the City before subdividing the property for urban development.

LBE has never applied to annex to or develop in the City of Simi Valley.

C. Petitioner Misstates The Facts.

Even with the liberality afforded pleading cases by both California and federal courts, petitioner's statement of the case to this Court is out of bounds. The statement not only misrepresents the actual facts and opinion below and facts of which the California courts may and did take judicial notice, the statement also misrepresents the facts *as pleaded in petitioner's own complaint.* For example:

1. Petitioner now claims, but did not allege in its complaint, that it only purchased the property "after both the County and the City assured LBE that both entities believed that the property was uniquely suited for immediate development." Petition, p. 2.

Before the property can be developed, the area must be annexed to the City pursuant to California Government Code §§ 56000 et seq. The property may be "prezoned" as a first step. California Government Code § 65859. LBE

never applied to prezone the land or annex to the City. Before development can occur petitioner must also submit applications for approval of a development plan, a subdivision map and building permits.

2. Petitioner now claims but did not allege that "at the City's *request* LBE prepared a Specific Plan." Petition, p. 2, ¶ 2; emphasis added.

This is not alleged in the complaint. In 1984 LBE prepared a draft specific plan. LBE abandoned the specific plan and has never petitioned to annex to the City or made any development application to the City.

3. "[A]t the City's encouragement and *request* LBE paid to have infrastructure being installed in the neighboring development [oversized]." Petition, p. 3.

This is nowhere alleged and is completely false. Paragraph 25 of the first amended complaint alleges that "[E]ncouraged by the Defendants, Long Beach Equities cooperated in paying for the oversizing of the infrastructure installed through the residential development immediately adjacent and to the south of the 250 acre parcel. . . ." There is no infrastructure to service urban development *on* LBE's property.

4. "The City imposed a moratorium . . . and stopped processing the Specific Plan for this property." Petition, p. 3.

The long expired moratorium (in 1987) did not apply to LBE's specific plan. The moratorium only applied to development permits, not legislative acts such as specific plans and zoning. LBE simply abandoned the specific plan and never pursued annexation to the City.

5. "But the City won't process that application [for two hundred forty-nine (249) homes] until LBE prepares a new Specific Plan. . . ." Petition, p. 3.

This is a complete falsehood and not alleged in the complaint. LBE never submitted its subdivision proposal to the City and development permits. The City will accept applications for annexation, a specific plan if only LBE would submit one.

6. "City employees told the County Board of Supervisors that it would take 8 to 10 years for LBE to complete the Specific Plan/EIR process now demanded and then obtain project approval, and then seek some of the few building permit allocations now permitted under the City's slow 'growth ordinance.'" Petition, p. 3.

LBE misrepresents the comments of an assistant City planner at a County Board of Supervisors public hearing. The planner said the City's growth management program is a ten (10) year program, *not* that it would take LBE ten (10) years to develop in the City. *See* Appendix 2.

REASONS WHY THE WRIT SHOULD BE DENIED

INTRODUCTION

While many important questions may have been left unanswered by this Court's 1987 regulatory takings decisions,[4] this is not the case to answer them. Under even the most conservative interpretation of takings jurisprudence, a land use regulation that allows three hundred twenty-five (325) units on two hundred fifty (250)

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[4] *Keystone Bituminous Coal Assoc. v. DeBenedictus*, 480 U.S. 470 (1987); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *First English Evangelical Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

acres of ranch land does not on its face constitute a taking of private property without just compensation, and a developer must at least try to annex to and develop in the City before claiming it would be futile to do so. The City's growth management program (Appendix 3) which permits substantial development each year does not on its face prohibit LBE from developing; LBE cannot be put in a better position than other potential developers by refusing to even apply to annex *to* or for permission to develop *in* the City.

Even if petitioner's constitutional claims had some merit and even if the California court erred in its analysis, the outcome of this case would be the same because petitioner's facial challenges to the City's regulations are barred by statutes of limitation and the City has not applied it regulations to petitioner's property.

I.

THE STATE COURT'S DECISION DOES NOT CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

A. The Alleged Facts In This Case Do Not Come Close To The Limits Of Police Power.

Even if there is confusion in the lower courts about the meaning of "economically viable use of property" this is not the case to dispel it. The state appellate court correctly stated this Court's standard for takings analysis:

> "To state a cause of action for inverse condemnation LBE must plead facts which show *either* that: (1) the application of the general zoning laws to its property does not

> substantially advance a legitimate state interest; *or* (2) such laws deprive it of substantially all economically viable use of its land."[5] Petition, Appendix C, p. 10; emphasis added.

California courts have not hesitated to tell state and local governments when they exceed their police powers.[6] On its facts, this case does not present any important question for this Court's review.

1. The State Court Followed This Court's Guidance When It Found that the Local Land Use Regulations Do Not Constitute a Facial Taking.

a. The state courts examined the City and County regulations and found that they substantially advance legitimate state interests.

The state court took judicial notice of and examined the City and County regulations and found that both the County's Guidelines for Orderly Development and the

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[5] *E.g.*, *Agins*, 447 U.S. 255, 261; *Nollan*, 483 U.S. 825; *Keystone*, 480 U.S. 470; and *First English*, 482 U.S. 304.

[6] *E.g.*, *Surfside Colony, Ltd. v. California Coastal Commission*, 226 Cal.App.3d 1260, 1267-1269 (1991) [applying *Nollan*]; *Twaine Harte Associates, Ltd. v. County of Tuolumne*, 217 Cal.App.3d 71, 80–92 (1990) [denial of use of parcel]; *Rohn v. City of Visalia*, 214 Cal.App.3d 1463, 1472-1477 (1989) [illegal exaction]; *Elysium Institute, Inc. v. County of Los Angeles*, 232 Cal.App.3d 408 (1991) [equal protection].

City's growth management program substantially advance legitimate state interests. The Court of Appeal observed:

> "The County enacted the Guidelines to promote *efficient and effective delivery of community services and to conserve the resources of County by encouraging urban development to occur within cities.* The Guidelines emphasize annexation as a means to accomplish these purposes.
>
> "City enacted its ordinance 'to protect the unique, hill-surrounded environment; enhance the quality of life; promote public health, safety or welfare and the general well-being of the community. . . .' By limiting the rate, distribution, quality and type of residential development on an annual basis, with periodic reviews of the ongoing situation, City seeks 'to improve local air quality, reduce traffic demands . . . and ensure that future demands for such essential services as water, sewers and the like are met. . . .'" Petition, Appendix C, p. 11; emphasis added.

The state court's recognition that "such legislative action is well designed to prevent the ill effects of poorly planned urbanization" (Petition, Appendix C, p. 13) is one that this Court has repeatedly acknowledged. *E.g.*, *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 392-395 (1926); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974); *Agins*, 447 U.S. 255, 261. As often noted by this Court, such legislative determinations are the province of the legislative bodies, not the courts. *City of New Orleans*

v. Dukes, 427 U.S. 297, 304 (1976); *Berman v. Parker*, 348 U.S. 26, 32-33 (1954).

b. The state court examined the City and County regulations and found that they do not foreclose all development.

The City's regulations which permit LBE three hundred twenty-five (325) units on two hundred fifty (250) acres do not on their face deny "economically viable use" of LBE's property. *Agins*, 447 U.S. 255, 262 [maximum of one (1) unit per acre]. This general plan designation allows more density than the two hundred forty-nine (249) units LBE allegedly desires. *Cf.*, Petition, p. 3.

The state court correctly observed that the City and County regulations "do not rule out development upon annexation." Petition, Appendix C, p. 22. The City growth management ordinance, of which the state courts took judicial notice, does not on its face require that development be delayed. In fact certain types of housing (*e.g.*, affordable) are given priority. Appendix 3, p. 4, § 7. "If LBE successfully applied for annexation it could explore other possibilities for development under the growth management ordinance." Petition, Appendix C, p. 18.

Interesting questions as to the precise meaning of "reasonable investment back expectations," "economically viable use" or "ripeness" are not justiciable in this case.

2. The State Courts Followed This Court's Guidance in Holding LBE's "As Applied" Claims Not Ripe for Judicial Review.

LBE has never presented any development plans upon which the City might act. It would be a novel idea indeed to hold that the City may be held accountable for a regulatory "taking" of property over which it has absolutely no legal jurisdiction or regulatory control. The City has no such power until the property is annexed to the City.

LBE did take a very preliminary step toward annexation by proposing a specific plan in 1984. LBE *does not allege* that this specific plan was ever formally rejected by the City. LBE has never actually applied to annex to the City. Having failed to pursue annexation or submit and pursue to conclusion any application to develop in the City, LBE lacks the essential element of an "as applied" claim — a *final decision* reflecting the City's *actual application* of its regulations to the property.

Since *Williamson County Regional Planning Comm. v. Hamilton Bank*, 473 U.S. 172, 189–191 (1985), it has been recognized by this Court and all the circuit courts that failure to seriously pursue development approvals through available legal channels is a jurisdictional bar to an "as applied" taking claim.[7] These cases rest upon

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[7] *See e.g., MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351-352 (1986); *Gilbert v. City of Cambridge*, 932 F.2d 51, 61 (1st Cir. 1991); *Eide v. Sarasota County*, 908 F.2d 716, 723-727 (11th Cir. 1990), *cert. denied* 111 S.Ct. 1073 (1991); *Landmark Land Company v. Buchanan*, 874 F.2d 717, 721–722 (10th Cir. 1989); *Unity Ventures v. County of Lake*, 841 F.2d 770, 774-776

(continued...)

important practical as well as jurisdictional restrictions. "A court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *MacDonald*, 477 U.S. 340, 348. They also rest on a fundamental substantive restriction. Until a landowner's good faith efforts to actually develop (or otherwise utilize) the property have been *denied* by the government, the government has not taken the property. *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126-127 (1985) [mere imposition of permit requirements not a taking]; *Gilbert*, 932 F.2d 51, 61.

Ripeness is not a game invented to test a landowner's pleading ingenuity or adeptness at filing pretextual development "applications." Ripeness mandates genuine efforts to comply with existing police power regulations before the jurisdiction of the courts may be invoked. LBE has made no such effort, and therefore has no basis for claiming that its constitutional rights have been denied. This case, contrary to LBE's suggestion, does not involve any fine points of the "ripeness" doctrine. LBE's claims are mainstream and dead center, precisely the type of speculative, premature claims barred by the ripeness doctrine.

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[7](...continued)
(7th Cir. 1988), *cert. denied* 488 U.S. 891; *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1453–1455 (9th Cir. 1987), *cert. denied* 484 U.S. 1043 (1988); *Kaiser Development Co. v. City and County of Honolulu*, 649 F.Supp. 926, 940–942 (D. Haw. 1986), *affirmed* 898 F.2d 112.

II.

LBE'S CONSTITUTIONAL CLAIMS ARE ALSO TIME BARRED

LBE's challenges to the City's land use regulations are also inappropriate for this Court's review because all of LBE's facial claims are barred by applicable statutes of limitation. Though not addressed in the state court's opinion, the issue was raised and briefed in the City's petition for extraordinary relief.

The time limits for any facial taking claim run from the time the challenged regulations are enacted. *Zinermon v. Burch*, 494 U.S. 113 (1990) [substantive due process violation is "complete when the wrongful action is taken"]; *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1085-1086 (9th Cir. 1991); *Barancik v. County of Marin*, 872 F.2d 834, 836 (9th Cir. 1988), *cert. denied* 110 S.Ct. 242 (1989). The statute of limitations for any challenge to the City's zoning or general plan enactments is one hundred twenty (120) days. California Government Code § 65009; *see Rossco Holdings, Inc. v. State of California*, 212 Cal.App.3d 642, 565–661 (1989), *cert. denied* 110 S.Ct. 1809 (1990);[8] *California Coastal Commission v. Superior Court (Ham)*, 210 Cal.App.3d 1488, 1495–1496 (1989) [holding statutory time limits for mandamus challenge also control inverse

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[8]. Petitioner blatantly misrepresents the holding of *Rossco Holdings*, 212 Cal.App.3d 642 by stating that this decision requires a landowner to challenge the constitutionality of underlying statutes as a prerequisite to challenging any zoning action. This is false. The case merely states that any damages claim for a taking must be brought within the same time period as a petition for writ of mandate, *i.e.*, the time for legal challenge on any other grounds.

condemnation challenges to land use regulatory actions]. The time limit for any facial challenge under 42 U.S.C. § 1983 in California is one year from the date of enactment. *De Anza Properties*, 936 F.2d 1084, 1085; *Barancik*, 872 F.2d 834, 836.

The County Guidelines were adopted in 1969; the City's growth management ordinance in 1986, both more than one (1) year before this action was filed. The general plan amendment permitting three hundred (325) units on LBE's two hundred fifty (250) acres occurred in October 1988, more than one hundred twenty (120) days before the City was named a defendant in this action.

III.

THE STATE COURT FOLLOWED THIS COURT'S GUIDANCE IN DETERMINING THAT THE CITY'S REGULATIONS DO NOT VIOLATE LBE'S SUBSTANTIVE DUE PROCESS RIGHTS

This case presents no colorable issue of "arbitrary or capricious" regulation implicating substantive due process concerns. This is not the case of an individual property or property owner singled out for vindictive or irrational treatment, a fact which serves to distinguish it from virtually every case in which a violation of substantive due process has been found. *See, e.g., Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988). Rather, LBE simply speculates as to the *effects* of a number of city-wide and county-wide planning policies (*i.e.*, the City's growth management program, the City's hillside zoning ordinance, the City's comprehensive general plan revision, and the County's annexation policy.) The County's annexation policy had been in effect for fifteen (15) years before LBE

bought the property. While the density of development for LBE's property was reduced by the hillside zoning and general plan revision, LBE fared no differently than many other owners of undeveloped land, and retains the ability to develop three hundred twenty-five (325) residences on its property. To suggest that "malice" or some concealed motive of "preventing development of LBE's property" (petition, p. 23) can be implied from these city-wide general planning actions is simply ridiculous.

LBE apparently also suggests that *any* attempt to downzone property is inherently "arbitrary and capricious" — at least where adequate infrastructure and services are allegedly available — and should be subjected to court scrutiny under a "balancing" test. This Court has never suggested, however, that the legitimate function of planning and zoning regulations is limited to determining whether "adequate" sewer, water and other services are available for a particular property. Government planners must also obviously take into account the ability of regional facilities and resources to serve *all* development in the area, not merely development on the plaintiff's land. Here the City's regulations were adopted, among other things, "to improve local air quality, reduce traffic demands. . . and ensure that future demands for such essential services as water, sewers and the like are met. . . ." Petition, Appendix C, p. 11. Limitations on development may also be imposed for a variety of other reasons recognized as legitimate by this Court. *See, e.g., Village of Belle Terre*, 416 U.S. 1, 9 [preserving quiet residential character]; *Agins*, 447 U.S. 255, 261 [discouraging "premature and unnecessary conversion of open-space land" and protecting residents from "ill-effects of urbanization"]; *Dukes*, 427 U.S. 297, 304 [preserving community character]; *see also*

Penn Central Trans. Co. v. City of New York, 438 U.S. 104, 129 (1978); *Berman*, 348 U.S. 26, 33 [community may be "beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"].

This is also not, as LBE attempts to characterize it, a case of "refusal to permit development." Petition, p. 23. This is the case of a developer who has never seriously applied for permission to develop under the locally mandated procedures, *i.e.*, annexation to the City and application for development approvals through the same channels as every other property owner in the City. The City's regulations on their face permit substantial development once the property is annexed to the City.

IV.

THE PETITION DISCLOSES NO SPECIAL AND IMPORTANT REASONS FOR GRANTING REVIEW IN THIS CASE

The leitmotif of LBE's petition is that the standards for "taking" and other constitutional challenges to land use regulations are unsettled. LBE does little, however, to explain how the facts alleged in this particular case will assist the Court to resolve these thorny issues.

A. There Is No Developed Factual Record.

Because this case comes to this Court from a dismissal at the pleading stage, there is no developed factual record which would assist the court in realistically addressing concrete land use issues of general concern. The "record" consists of scattered factual allegations in LBE's complaint, embedded in literally scores of pages of rhetorical vilification and *characterization* of the

respondents' actions and a voluminous amount of city/county documents of which the California courts took judicial notice. At most this case presents pleading issues under California law. Perhaps even this would be of some interest to California land use lawyers, but it is unlikely to provide any useful guidance or clarification of substantive issues to government planners and officials, landowners, the general public, or trial courts presented with genuine constitutional issues. Consideration of this case would not represent the best use of this Court's time, even were the purported constitutional issues raised by LBE fairly presented.

B. This Case Implicates No Important Unsettled Issue of Takings Law.

On it face, this case is nothing more than a garden variety zoning case. Even assuming that issues remain to be resolved in the area of takings clause jurisprudence, this case offers scant opportunity to expand on existing case law.

1. The Case Provides No Genuine Opportunity to Define "Economically Viable Use".

The challenged land use regulations in this case provide for development of three hundred (325) units on two hundred fifty (250) acres. Whatever, the outer boundaries of "economically viable use," they are plainly not implicated by residential zoning in excess of one (1) unit per acre. *Cf.*, *Agins*, 447 U.S. 255, 262.

2. The Case Involves No Important Issue as to the Legitimacy of Governmental Regulations.

This case involves no novel issue regarding the legitimacy of land use regulations. It merely involves the time-worn claim that changes in local land use policies might render the developer's plans impractical. LBE does not seriously contend that any of the stated purposes of City's and County's regulations are illegitimate, nor could it given well settled authority. *See,Village of Euclid*, 272 U.S. 365; *Village of Belle Terre*, 416 U.S. 1, 9; *Agins*, 447 U.S. 255, 261; *Dukes*, 427 U.S. 297, 304; *Penn Central*, 438 U.S. 104, 129; *Berman*, 348 U.S. 26, 33. Neither is this a case in which the regulations fail to "substantially advance" their apparent goals. Rather the purpose and effect — that of abating the consequences of runaway development — are direct and to the point.

LBE also suggests that assessment of the legitimacy and reasonableness of the respondent's actions necessarily requires a factual trial and a fine balancing of interests. Petition, p. 12-13, citing *McDougal v. County of Imperial*, 942 F.2d 668, 679–680 (9th Cir. 1991). This argument simply ignores the posture of the case. The only challenge currently justiciable is a facial challenge to the City's and County's general policies.[9] In the context of facial challenges, this Court has had little trouble resolving the legitimacy of such challenged regulations. *See, e.g., Agins*, 447 U.S. 255; *Keystone*, 480 U.S. 470, 485-492; *Hodel v. State of Indiana*, 452 U.S. 314, 327-329 (1981). In an individual permit case, such as *McDougal*, 942 F.2d 668,

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[9] Assuming the applicable statues of limitation are ignored.

the court may indeed have occasion to more closely examine the relationship between purported government objectives and the actual impacts of the regulation. *McDougal* involved the imposition of particular development restrictions and conditions, not promulgation of general policies.

The challenged regulations in this case are neither unduly harsh or unusual on their face—they permit development of three hundred twenty-five (325) units on LBE's land—nor is there any apparent mismatching of ends and means. *Cf.*, *Nollan*, 483 U.S. 825. The regulations limit the overall intensity of development on LBE's land, and elsewhere in the City and its sphere and area of influence. This is precisely what they must do to serve the obvious, permissible goals relating to air quality, water supply, solid waste disposal and traffic congestion. This Court cannot endorse plaintiff's view that the legitimacy of every planning action must be tested by a judicial trial. Contrary to LBE's view, the state court of appeal acted correctly in this case in resolving the legitimacy issue as a matter of law.

3. This Case Presents No Bona Fide Issue of Frustrated "Reasonable Investment-Backed Expectations."

LBE contends that this Court has not exhaustively examined or explained the significance of "reasonable investment-backed expectations" in takings analysis. LBE, however, remains free to develop its property for residential development. *Cf.*, *Agins*, 447 U.S. 255, 262 [owner remains free to pursue "expectations" through permit process]. The City and County policies requiring annexation and preparation of a specific plan were in effect

long before LBE bought its property. LBE's only possible complaint is its speculation that it may not be able to build as fast as it would like under the City's growth management program.

This Court has made it abundantly clear that asonable investment-backed expectations" are significant only when they are *reasonable*. *Philips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988) ["We have recognized the importance of honoring reasonable expectations in property interests. [Citation.] But such expectations can only be of consequence where they are 'reasonable' ones."]; *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1006-1008 (1984).

Like the Fifth Amendment notion of "property" itself, the "reasonableness of a landowners expectation" can only be understood in the context of applicable state laws. *Cf.*, *Ruckelshaus*, 467 U.S. 986, 1001; *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980). In an area subject to heavy ongoing governmental regulation there can be no reasonable expectation that regulations will remain frozen for a particular property owner's benefit. *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 226-227 (1986); *Ruckelshaus*, 467 U.S. 986, 1008-1010. As this Court has indicated many times, exposure to changing regulations is merely one of the inherent "incidents" to property ownership; only where regulatory changes are "substantial and *unforeseeable*, and can easily be identified and redistributed" do they become significant for takings purposes. *Kirby Forest Products, Inc. v. United States*, 467 U.S. 1, 14 (1984); emphasis added. The County's annexation policies were in effect for over fifteen (15) years before LBE purchased the property and most

cities in the County had already adopted some sort of growth management program to address traffic and air quality concerns. *See Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984).

Land use regulation is classically a field in which current policies are subject to change. Under California law, a general plan is by nature tentative and "subject to alteration." *Selby Realty Co. v. City of San Buenaventura*, 10 Cal.3d 110, 119-120 (1973). Also under California law, a landowner generally accrues no right to rely on existing zoning until all development permits have been granted. *Avco Community Developers, Inc. v. South Coast Regional Comm.*, 17 Cal.3d 785, 791-797 (1976), *cert. denied* 429 U.S. 1083. The court below relied on this principle in finding that no "reasonable investment-backed expectations" of LBE's were implicated by the city and county regulations.

LBE is a sophisticated investment firm, well schooled in the uncertainties of land use development. LBE could have no "reasonable expectation" that it would be exempted from the city-wide changes in zoning and reevaluation of the general plan which occurred in 1984-1988. Indeed, some of the policies LBE complains of (*i.e.*, the County's annexation policy and the City's requirement for a specific plan) were in place when LBE purchased its property in 1984.

C. This Case Presents No Close Issue of Ripeness.

LBE contends in its headline argument that "there is hopeless confusion throughout the country on what it takes to 'ripen' a regulatory taking case . . ." Petition, p. 23. Somewhat paradoxically, LBE argues in the text that

determination of ripeness is inherently an *ad hoc* exercise (*ibid.*), and hence one which defies the promulgation of fixed judicial rules. If ripeness indeed requires an inherently *ad hoc* determination, it can hardly be said that reviewing the *ad hoc* analysis of the state court of appeal in this case will lead to a major settling of the law in this area.

"Ripeness" considerations do not, of course, bar facial challenges to governmental regulations. *Keystone*, 480 U.S. 470, 485–494; *Agins*, 447 U.S. 255, 260 [taking claim]; *Village of Euclid*, 272 U.S. 365, 386. This was recognized by the court of appeal in this case. Petition, Appendix C, pp. 11 and 19.

"Ripeness" is a concern where the property owner alleges that the actual *application* of otherwise valid regulations will produce an unconstitutional *result*. LBE has alleged no facts supporting such a claim. As this Court has long recognized, such a case cannot be litigated until the court has some idea of what the *result* of application of the regulations will actually be. *MacDonald*, 477 U.S. 340, 349-351; *Williamson County*, 473 U.S. 172, 191. The courts below have universally declined to accept a plaintiff's mere speculations as to the future result, for obvious reasons. Litigation of such a case can only result in a trial of what *might* occur in the future, not what actually has or will occur.

Instead of opening the courts to judicially sponsored guessing games, the lower courts following *MacDonald* and *Williamson County* have universally held that no concrete controversy arises until there has been at least an actual attempt to develop under the laws (generally manifested by an actual application), and at least some affirmative government action to deny development. *See, e.g.*, cases

cited at note 7. Some decisions suggest that a concrete controversy may be precipitated by affirmative governmental acts other than formal denial of an application, such as a preemptive rezoning or other action specially calculated to defeat the application. *Landmark Land*, 874 F.2d 717, 721-722; *Gilbert*, 932 F.2d 51, 61; *cf.*, *Hoehne v. County of San Benito*, 870 F.2d 529 (9th Cir. 1989) [rejected application *followed by* rezoning excused further applications]. LBE, however, does not allege any facts which even approach the threshold of ripeness. There is no dispute that the mandated path to development in this case was annexation to the City, and that LBE never petitioned to annex.

LBE also contends that the development process under the City's jurisdiction might take too long. No facts, however, support this allegation. The state court of appeal examined the City's *actual regulations* and found:

> "Neither is it "'clear beyond peradventure . . .'" that the Growth Management Ordinance would result in such excessive delay that it can be assumed that all of the property's beneficial uses have presently been destroyed. (*See Kinzli v. City of Santa Cruz*, *supra*, 818 F.2d at p. 1454, fn.5, citing *Norco Construction, Inc. v. King County*, 810 F.2d 1143, 1145 (9th Cir. 1986).) The instant temporary ordinance calls for a reevaluation in 1991 of its restrictions, pursuant to the 1990 census and it automatically expires in 1996." *See* Appendix C, p. 6, § 11.

The state court also found after reviewing the City's growth management program that "The restrictions in the Growth Management Ordinance and the open-space zoning designations do not rule out development upon annexation." Petition, Appendix C, p. 22. This Court has never suggested that speculative "delays" amount to a "taking" of property. *See Agins*, 447 U.S. 255, 263 n.9; *cf.*, *First English*, 482 U.S. 304, 321 [distinguishing "normal delays in obtaining building permits, changes in zoning ordinances, variances and the like"]. The state court of appeal's interpretation of the City's ordinances themselves — as opposed to LBE's self-serving and wholly inaccurate *characterizations* of the regulations — does not offend constitutional sensibilities. Courts of law are competent to interpret ordinances and regulations; they are not bound by a plaintiff's pleaded interpretation or speculation regarding their meaning.

LBE takes refuge in a line of cases which hold that the ripeness requirement is satisfied where the result of the regulations is certain, *i.e.*, pre-ordained by the regulations themselves. Petition, pp. 28-29. The example given is *First English*, 482 U.S. 304, where the challenged regulations *on their face* (purportedly) banned *all* development.[10] This argument merely reiterates the obvious — *facial* challenges are not barred by ripeness considerations. A regulation which on its face forbids development is thus subject to immediate attack. This is not such a case.

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[10] *Cf.*, *First English Evangelical Church of Glendale v. County of Los Angeles*, 210 Cal.App.3d 1353, *cert. denied* 110 S.Ct. 866 (1989) [when the California court examined the actual ordinance it found the ordinance did not, in fact, ban all development].

CONCLUSION

For all the foregoing reasons respondent City of Simi Valley respectfully submits that this case presents no special and important reasons for review by writ of certiorari.

Respectfully submitted,
Freilich, Stone, Leitner & Carlisle
By KATHERINE E. STONE
Counsel of Record for Respondent
CITY OF SIMI VALLEY

APPENDICES

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CONSERVANCY AGENCY

FILED
JAN 03 1992
SHEILA GONZALEZ, Superior Court
Executive Officer and Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

LONG BEACH EQUITIES, INC., a California corporation; MARR RANCH ASSOCIATES, INC., a California corporation, *Petitioners/Plaintiffs,* *vs.* COUNTY OF VENTURA; BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA; PLANNING COMMISSION FOR THE COUNTY OF VENTURA; THE CITY OF SIMI VALLEY; THE CITY COUNSIL OF SIMI VALLEY; DOES 3 THROUGH 50, *Respondents and Defendant*	CASE NO. 103364 NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 3, 1991 a judgment of dismissal was filed and entered in this action. Defendants City of Simi Valley and The City Council of Simi Valley were awarded costs in the amount of $6,189.75. Attached as Exhibit "A" is a true and correct copy of the judgment.

Dated: December 31, 1991

Respectfully submitted,

FREILICH, STONE, LEITNER & CARLISLE

By: Katherine E. Stone

KATHERINE E. STONE

Attorneys for Respondents/Defendants

CITY OF SIMI VALLEY, et al.

RECEIVED
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VENTURA COUNTY

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FILED
DEC - 5 1991
ADELA GONZALEZ, Superior Court
Executive Officer and Clerk
By M. Chavez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

LONG BEACH EQUITIES, INC., a California corporation; MARR RANCH ASSOCIATES, INC., a California corporation, *Petitioners/Plaintiffs,* *vs.* COUNTY OF VENTURA; BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA; PLANNING COMMISSION FOR THE COUNTY OF VENTURA; THE CITY OF SIMI VALLEY; THE CITY COUNCIL OF SIMI VALLEY; DOES 3 THROUGH 50, *Respondents and Defendants.*	CASE NO. 103364 JUDGMENT AND ORDER

The demurrer of defendants City of Simi Valley and City Council of Simi Valley ("City") to the first amended complaint was heard on October 26, 1989, before the Honorable Bruce Thompson, Judge of the Superior Court. Karen J. Lee of *HAMILTON & SAMUELS* appeared for plaintiff Long Beach Equities. Robert Philibosian of Baker & McKenzie appeared for plaintiff Marr Ranch. Katherine E. Stone of *FREILICH, STONE, LEITNER & CARLISLE* appeared for the City. The Court granted the demurrer without leave to amend as to the Third Cause of Action (discrimination in application of zoning and land regulation laws), Fourth Cause of Action (deprivation of civil rights), Fifth Cause of Action (conspiracy to deprive plaintiffs of civil rights), and overruled the demurrer as to

the First Cause of Action (inverse condemnation), Second Cause of Action (denial of substantive and procedural due process of law), and Sixth Cause of Action (declaratory and injunctive relief).

The City filed a petition for mandate to compel the trial court to sustain the City's demurrer in its entirety without leave to amend. In *Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d 1016, the Court of Appeal granted the City's petition for a writ of mandate and held "let a writ of mandate issue to compel the trial court to enter a new and different order sustaining City's demurrer in its entirety without leave to amend. Costs to the City and County." (*Id.* at 1042.) The remitter was issued on October 1, 1991.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The demurrer of defendants CITY OF SIMI VALLEY AND CITY COUNCIL OF SIMI VALLEY is sustained as to each and every cause of action without leave to amend.

2. The first amended complaint is dismissed with prejudice.

3. Plaintiffs shall take nothing by this suit.

4. Defendants CITY OF SIMI VALLEY AND CITY COUNCIL OF SIMI VALLEY are awarded costs to the City in the amount of $ 6189.75 .

Dated: DEC 2 1991

Bruce A Thompson

JUDGE OF THE SUPERIOR COURT

JANUARY 17,1989 TRANSCRIPT OF THE PUBLIC HEARING REGARDING GENERAL PLAN AMENDMENT SCREENING BY THE BOARD OF SUPERVISORS

SUPERVISOR LACEY: Any questions? Thank you very much. Did.. Mr. Lightfoot, you look like you now want to testify. O.K.

MR. JAMES LIGHTFOOT: Madam Chairman and members of the Board, I apologize for the statement I made earlier. It was not my intent to speak, but inasmuch as representatives of Long Beach Equities have raised the issue of the growth control ordinance, I felt that it was worthwhile to remind you of where the numbers came from initially. In 1985, in conjunction with development of the 208 Water Quality Plan, the Air Quality Management Plan, the Spheres of Influence Study, and the Sub-regional Transportation Plan, the County prepared the Countywide Planning Program (CPP) Population Forecast which allocated population growth to various jurisdictions within the County. These populations forecasts were adopted by this Board of Supervisors, and subsequently were adopted by the various cities including the City of Simi Valley. In July of 1986, the City adopted its Control Growth Management Plan which was designed to bring the City's growth into conformance with the CPP projections. Uh, what we now see is an application to the County by Long Beach Equities for a General Plan Amendment, and Tentative Tract approvals, that appear to be an attempt to avoid adherence to the City's general plans, City's codes and ordinances, as well as the CPP projections adopted by the County. Consequently, the City must object in the

strongest possible terms to these actions being processed by the County. The comments that both Mr. Freidman and Mr. Hamilton made about the timing are fairly close to correct. We have a program that was adopted, it's a ten-year program as mentioned, in 1986, in July, that has specific rules applied to the first five years only. The City is now approaching the fourth and fifth year, and the numbers of permits that will be available in this fourth and fifth year are very limited because of the numbers that were issued in the first three years. At the point of reevaluation, at the five-year mark, we will have, we believe, the information from the 1990 federal census. If we have managed to adhere to the CPP projections in a workmanlike and satisfactory manner, the rules that were adopted for the first five years, in all probability, will be relaxed. However, if we find that the population has grown beyond our projections, then the next five years are going to be as tight as the first five. The other statements as have been made by your staff, referring to the policies, the policies adopted by LAFCO, these we certainly concur with, but we believe that to avoid the actions that the City has laid out in their codes and ordinances at this time is certainly not an action that we would feel should occur. The question was raised by Mr. Hamilton, where is the injury, where is the reason for adhering to the City's code and ordinances? We believe that the reason and the injury has to do with the numbers that were developed under the 208 Water Quality Management Plan, the Air Quality Plan, and the other plans dealing with the transportation and infrastructure. I'd be happy to answer any other further questions. Thank You.

SUPERVISOR LACEY: Any questions? Thank you, very much. That's all the cards I have on this one.

SUPERVISOR JAMES DOUGHERTY: Madam Chair, the testimony and the aerial photo that we've been given clearly indicate that this is entirely a City problem. If in fact, the Board is going to be called upon to address what some persons may see as inequities occurring in the cities another forum is going to have to tell us to do that. So, with those words, Madam Chairman, I would move to follow the staff recommendations and deny this project.

SUPERVISOR LACEY: O.K., any objections? All right, that will be the straw motion. O.K., item 5. I don't have any cards on this, I'm just telling you that.

(Mr. Eisenhut proceeds with the next request)

CERTIFICATE OF THE CLERK OF THE BOARD OF SUPERVISORS COUNTY OF VENTURE

I RICHARD D. DEAN, County Clerk and Ex-officio Clerk of the Board of Supervisors of the County of Venture, State of California, do hereby certify that the attached transcript of the Venture County Board of Supervisors hearing of January 17, 1989, Item No. 6, Applicant No. 4, is true and correct, as per the recording of said meeting, on file in the Clerk of the Board Office, Administration Building of the County Government Center, 800 South Victoria Avenue, in the City of San Buenaventura, County of Venture, State of California.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of said Board of Supervisors to be affixed hereto this 16th day of February, 1990.

RICHARD D. DEAN, County Clerk
and Ex-officio Clerk of the
Board of Supervisors

By _____
Deputy

ORDINANCE NO. 638

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY ADOPTING A CONTROLLED-GROWTH LIMITATION PLAN AND MAKING FINDINGS OF FACT IN SUPPORT THEREOF

WHEREAS, The City Council of Simi Valley is concerned about the rate of growth and quality of development in the City. While the City Council recognizes the need for new jobs, improved shopping facilities and housing opportunities for all the residents of the community, including young adults, families and senior citizens, they also recognize the need to augment the existing General Plan policies and City ordinances which regulate residential development. Therefore, in order to protect the unique, hill-surrounded environment; enhance the quality of life; promote public health, safety of welfare and the general well-being of the community, the City Council deems it necessary to adopt a strong CONTROLLED-GROWTH LIMITATION PLAN. This Plan will limit the rate, distribution, quality and type of residential development on a year-to-year basis to improve local air quality, reduce traffic demands on local streets and the 118 Freeway and ensure that future demands for such essential services as water, sewers and the like are met; and

WHEREAS, the City Council has monitored development and land uses, and related trends in the Community in accordance with the General Plan; and

WHEREAS, the City Council held public meetings on May 5, 12 and 19, 1986 and duly noticed public hearings on June 9, 16, 23, 26 and 30, 1986 to consider issues

associated with the City's future population and growth and the consideration of growth management alternatives.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and declares that:

A. The above recitals are true and correct.

B. The adoption of this CONTROLLED-GROWTH LIMITATION PLAN will not have a significant effect on the environment and that a Negative Declaration has been completed in compliance with C.E.Q.A. and the State C.E.Q.A. Guidelines and said Negative Declaration is hereby approved.

C. The adoption of a CONTROLLED-GROWTH LIMITATION PLAN is necessary to carry out the City's General Plan Goals and Policies, incorporated herein by reference and for the protection of the public health, safety, or welfare based upon the findings contained in Section 2 herein.

SECTION 2. The City Council further finds and declares:

A. That the Countywide Planning Program's base population projections for the Simi Valley Growth Area from 1980 to 2010 (1980, 80,294; 1985, 90,640; 1990, 103,220; 1995, 112,650; 2000,121,170; 2005, 129,220; 2010, 136,930) will permit orderly improvement of water supply, wastewater treatment, flood control and regional transportation facilities and are used as a major component in the creation of the Air Quality Management Plan (AQMP).

B. That maintenance of clean and healthful air is essential to the community, and failure to adopt a CONTROLLED-GROWTH LIMITATION PLAN will pose a threat to the public health, safety, or welfare by impeding the AQMP's Reasonable Extra Efforts Program.

C. That future residential development which is not in compliance with the Countrywide Planning Program may force some local streets to service Level F at peak hours, and that the 118 Freeway, during morning and evening peak hours, is already operating in excess of capacity. The inability of the 118 Freeway to handle projected traffic for Simi Valley, Moorpark and Thousand Oaks is a region-wide problem.

D. That the traffic operating at Level F during peak hours will cause a decline in local air quality and create the potential for decline in the health of residents of the community.

E. That it is important to the health, safety or welfare of the residents of Simi Valley that local roadways and the 118 Freeway operate at the best available functional level.

F. That the Cities of Simi Valley, Thousand Oaks, and Moorpark and the County unincorporated area, by virtue of a substantial number of approved units, have provided ample opportunity for additional dwelling units in eastern Ventura County. Therefore, the City Council has balanced the effect of this CONTROLLED-GROWTH LIMITATION PLAN against the region's housing needs and have determined that the facts supporting the need for the CONTROLLED-GROWTH LIMITATION PLAN outweigh the effects which the PLAN might have on the region's housing needs.

G. That numerous vacant industrial buildings in the City demonstrate that local employment is not keeping pace with dwelling unit construction and new residents are forced to commute to jobs outside Simi Valley, further aggravating 118 Freeway peak hour congestion.

H. That the adoption of a CONTROLLED-GROWTH LIMITATION PLAN to limit growth will allow the Ventura County Flood Control District to provide necessary channel improvements to Calleguas Creek, Arroyo Simi, Sycamore Canyon, and Tapo Canyon at a rate that will help keep pace with future development. Floods have occurred in the Oxnard Plain over the past eight years, resulting in millions of dollars in property damage. Several of these floods have led to the filing of lawsuits against the City, alleging that the development has increased stormwater runoff into the Arroyo Simi, thus contributing to downstream flooding. The fiscal threat to the City of these types of cases poses a threat to public health, safety, or welfare. The CONTROLLED-GROWTH LIMITATION PLAN will reduce future development-related stormwater runoff into Calleguas Creek, thus minimizing the potential for lawsuits against the City.

I. That this CONTROLLED-GROWTH LIMITATION PLAN is needed because the supply of water from the Calleguas Municipal Water District may be restricted by the Metropolitan Water District during peak demand hours in the future.

J. That due to the historical decline in school enrollment and the holding in reserve of closed schools, the CONTROLLED-GROWTH LIMITATION PLAN will not adversely affect the Simi Valley Unified School District.

K. That the County of Ventura has adopted the Countywide Planning Program for the protection of the public health, safety, or welfare based upon findings of fact relating to the impacts of air quality, water quality, traffic and balancing the region's housing needs.

L. That in reliance on the Countywide Planning Program findings of fact, which are incorporated by reference herein, the City has adopted the population projections of said Program.

SECTION 3. The City's actual population is the determining factor in this CONTROLLED-GROWTH LIMITATION PLAN.

SECTION 4. The adopted Growth Area Population Guidelines which are used in the Countywide Planning Program, AQMP, 208 Water Quality Management Plan and Regional Transportation Plan for the Growth Area are established as the population forecast used in this CONTROLLED-GROWTH LIMITATION PLAN. The target population for 1991 shall be 105,106, and the maximum permissible population for 1996 shall be 114,354. The City Council shall reserve the right to further limit population growth for the purpose of promoting public health, safety, or welfare; traffic control; compliance with County, State, or Federal regulations; or other compelling reasons.

SECTION 5. To reasonably implement a CONTROLLED-GROWTH LIMITATION PLAN, a population limitations may be achieved only through restrictions on issuance of building permits for new dwelling units. For this purpose, the term "equivalent dwelling unit" shall be utilized, which, at the adoption hereof, shall be defined as:

a) an apartment unit is equivalent to 2.3 residents, and

b) any other single family dwelling unit is equivalent to 3.358 residents.

These ratios shall be binding on the City until July 1, 1989, at which time the City Council may, following a duly-noticed public hearing, adjust these ratios per demographic data then available, except however, that no such adjustment shall allow a reduction in these 2.3 and 3.358 ratios by more than 10%. The equivalent dwelling unit permit maximum which will provide the method to predetermine, measure, and control population growth through the issuance of building permits, as illustrated on Exhibit A attached to this ordinance, shall be the Population Growth Guidelines of the City.

SECTION 6. During the first fiscal year of this PLAN (July 1, 1986 to June 30, 1987), available quarterly permits (as illustrated within Exhibit A), may be exceeded by no more than fifty (50) percent for each quarter of that year; during the second fiscal year (July 1, 1987 to June 30, 1988), available quarterly permits (as illustrated within Exhibit A) may be exceeded by no more than forty (40) percent for each quarter of that year; and during the third fiscal year (July 1, 1988 to June 30, 1989), available quarterly permits (as illustrated with Exhibit A) may be exceeded by no more than thirty (30) percent for each quarter within that year. All remaining permits shall be distributed equally over fiscal years four and five of this CONTROLLED-GROWTH LIMITATION PLAN.

SECTION 7. Senior, senior affordable and affordable residential developments for very-low to lower income households shall have preferential rights for allotment of

permits. Senior and senior affordable units shall have not less than twenty (20) percent and other affordable not less than fifteen (15) percent of each allocation period's available permits identified on Exhibit A and in accordance with the allocation system to be established per Section 10.

SECTION 8. Any available quarterly permits remaining unused shall be available in any subsequent quarter.

SECTION 9. The City shall review this CONTROLLED-GROWTH LIMITATION PLAN concurrent with the General Plan Update to be begun not later than June 1989 to evaluate the progress toward the projected population figure for 1991 (105,106). Based upon this review, the permit allocation procedure shall be revised to ensure that maximum population projections are not exceeded.

SECTION 10. Immediately following the effected date of this PLAN, the City shall adopt, after a duly-noticed public hearing, a system for allocating building permits to implement the requirements of this PLAN. Within ninety (90) days of the effective date of this PLAN, the allocation system shall be adopted by ordinance. The allocation system shall include criteria for the evaluation of projects, including but not limited to: Senior citizen housing; housing for very-low or lower income families; design excellence, including community-wide amenities; infill development; housing which provides a positive fiscal impact on City revenues; and the availability or provision for public facilities and services, including but not limited to, sewers, roads, water, storm drains and the like; or additional urgent housing needs determined by the City Council after public hearings. The allocation system shall also set criteria for

evaluating single-unit developments. In the interim, the permit over-allocation provisions in Section 6 hereof shall not be applicable and available permits shall be issued on a first-come, first-serve basis subject to the numerical limits in Exhibit A. If an allocation System has not been approved within the ninety (90) days following the effective date of this PLAN, no further building permits shall be issued until the allocation system is approved. The City Council shall adopt an urgency moratorium to implement this provision if necessary. The provisions of this PLAN shall apply to all residential planned developments, tentative tracts, and vesting tentative tracts, except the Wood Ranch Specific Plan, for which the provisions of The Wood Ranch Development Agreement shall prevail. The total number of permits remaining to be issued to The Wood Ranch under The Specific Plan shall be averaged over the term of the Development Agreement and subtracted annually from the total number of permits available for all residential development. Upon termination of the Development Agreement, unallocated permits related thereto shall be made available City-wide and shall be added to Exhibit A accordingly. In the event that a previously adopted ordinance on this subject mandated the establishment of an allocation system similar hereto, compliance with said previous ordinance shall constitute compliance with this section.

SECTION 11. Not later than July 1, 1991, the facts creating the need and necessity for this CONTROLLED-GROWTH LIMITATION PLAN shall be re-evaluated in concert with the latest revisions of the General Plan and the results of the 1990 United States Census. Future growth limitations for the next five-year portion of the CONTROLLED-GROWTH LIMITATION

PLAN shall be based on the need and necessity established by criteria enunciated in Section 4, the revised General Plan, and the City's 1996 Countywide Planning Program Population Guideline of 114,354.

SECTION 12. This CONTROLLED-GROWTH LIMITATION PLAN shall be in effect until July 1, 1996.

SECTION 13. THIS ORDINANCE SHALL NOT BE REPEALED OR AMENDED EXCEPT BY A VOTE OF THE PEOPLE. At the end of ten (10) years, this ordinance, as it may be recommended for amendment by 4/5 vote of the Council following duly-noticed public hearings, shall be placed on the ballot in order to allow its re-adoption by the People.

SECTION 14. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and an independent provision and such decision shall not affect the validity of the remaining portion hereof. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

SECTION 15. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City within fifteen days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance and shall cause the ordinance and his certification, together with proof of publication, to be filed in the Office of the Clerk of this City.

PASSES and ADOPTED this 21 day of July, 1986.

ATTEST

Myrna Katsch, Deputy City Clerk

ELTON GALLEGLY, MAYOR OF THE CITY
OF SIMI VALLEY, CALIFORNIA

APPROVED AS TO FORM:

John Torrance, City Attorney

APPROVED AS TO CONTENT:

M.L. Koester, City Manager

James R. Lightfoot, Acting Director Department of
Community Development

EXHIBIT A
CONTROLLED GROWTH LIMITATION PLAN

Quarter Beginning	* Permits Available After Adjustment	**Permits Including Over-allocation 50-40-30	Interpolated Countywide Planning Program Population
July 1, 1986	107	161	94,414.
October 1, 1986	107	161	
January 1, 1987	107	160	95,672.
April 1, 1987	107	160	
July 1, 1987	107	150	
October 1, 1987	107	150	
January 1, 1988	107	150	98,188.
April 1, 1988	107	149	
July 1, 1988	107	139	
October 1, 1988	107	139	
January 1, 1989	107	139	100,704.
April 1, 1989	107	139	
July 1, 1989	107	43	
October 1, 1989	107	43	
January 1, 1990	107	43	103,220.
April 1, 1990	107	43	
July 1, 1990	107	43	
October 1, 1990	107	43	
January 1, 1991	107	43	105,106.
April 1, 1991	107	42	
January 1, 1992	-		106,992.
January 1, 1993	-		108,878.
January 1, 1994	-		110,764.
January 1, 1995	-		112,650.
January 1, 1996	-		114,354.

* Historically Simi Valley has averaged 888 residential building permits per year since 1975. However, in 1985, an unusually high number of permits (2,328 equivalent dwelling unit permits) were issued due to low interest rates and other economic conditions. Since, under the Countrywide Planning Program policies adopted by the City Council, only 1,067 permits were available for the year, 1,267 were borrowed from future allocations. So far, in the first two quarters of 1986, 1,095 equivalent dwelling unit permits have been issued. Only 534 permits (half of 1,067) were available, therefore an additional 561 were borrowed from future allocations. The number of permits available for the next 5 years is 5,335 (1,067 X 5 = 5,335). Subtracting the borrowed permits (1,261 + 561 = 1,822) from this five year allocation (5,335 - 1,822 = 3,513) leaves 3,513 residential permits available for the period from July 1,

1986 to June 30, 1991 in order to stay within the maximum population under the Countywide Planning Program.

In addition, the Wood Ranch, per its Development Agreement has 2,952 permits remaining to be issued over the next 10.75 years. This number (2,952) was averaged over that time (approximately 274.6 permits per year) and the average numbers were subtracted from each year's number of available permits (per Section 10). Therefore, the base figure distributed over the first five years of the PLAN was: 3,513 - (274.6 X 5 = 1,373) = 2,140.

**Per Section 6 available quarterly permits may be exceeded by 50%, 40% and 30% during the first, second and third years, respectively, of the CONTROLLED-GROWTH LIMITATION PLAN.

I, Deputy City Clerk of the City of Simi Valley, California, do hereby certify that the foregoing Ordinance No. 638 was regularly introduced and adopted by the City Council of the City of Simi Valley, California, at a regular meeting thereof held on the 21 day of July, 1986, by the following vote of the City Council:

AYES: Council Members McAdoo, Rock, Mayor Pro Tem Stratton and Mayor Gallegly

NAYS: None

ABSENT: Council Member Howard

ABSTAINED: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Simi Valley, California, this 22nd day of July, 1986.

DEPUTY CITY CLERK OF THE
CITY OF SIMI VALLEY, CALIFORNIA

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL

DATE July 20, 1989

Office of the City Clerk

Susan Massa

Deputy City Clerk

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on January 24, 1992, I served the within ***Brief Of Respondent City Of Simi Valley In Opposition To Petition For Writ Of Certiorari*** in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(Express Mail: original and forty copies)

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Newport Beach, CA 92660

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Berger & Norton
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Los Angeles, CA

J. Robert Flandrick
Virginia R. Pesola
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611 West Sixth Street
Los Angeles, California 90017

The Honorable Steven Perren
Presiding Judge
Ventura County Superior Court
Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

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Second Appellate District
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James L. McBride,
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County Counsel
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

The Honorable Bruce A. Thompson
Trial Court Judge
Ventura County Superior Court
800 South Victoria Avenue
Ventura, California 93009

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 24, 1992, at Los Angeles, California.

Betty J. Malloy
(Original signed)